



GENERAL TERMS AND CONDITIONS FOR ALL ONLINE AGREEMENTS

PLEASE NOTE: These General Terms and Conditions for All Online Agreements (the “Terms”) apply to all purchase orders (herein “Order”) and agreements (“Agreement”) which the City of Greenville, South Carolina (“City”) approves or enters into through its web site. If you have used the City’s website to submit or receive an Agreement for the provision of goods or services, then the Terms apply. The Terms are incorporated by reference into each web site purchase order or agreement. No approval or consent by any City employee is valid unless the Terms apply.

1. Supplier. “Supplier” means the person or business entity providing goods or services to the City under an Agreement.
2. Entire Agreement. The Terms and the Order are intended by the City and the Supplier to be a complete and final expression of the Agreement. If there is any conflict between language in the Terms and the wording of any other document in the transaction which is generated by either party, then the Terms prevail. No oral order or statement or correspondence to the contrary is binding, unless it is reduced to writing, is signed by the Purchasing Administrator, and specifically references this provision. Exceptions will be approved only in extraordinary circumstances. The Terms also prevail over any course of dealing, course of performance, or usage of trade. However, notwithstanding the forgoing language, any representation by the Supplier as to the condition of the goods or services, or their fitness for the City’s particular purpose, shall survive as an express warranty.
3. Electronic Data Interchanges. When the City transmits the purchase order approval by way of electronic data interchanges, the Terms apply in the same manner as if they had been included verbatim in the transmission.
4. Oral Order. Any oral order, by telephone or otherwise, must be confirmed in writing by the City in order to be binding.
5. Right of Rescission of Oral Order. If the City places an oral order and the Supplier does not confirm acceptance within fourteen (14) days of the order being placed, then the City may rescind the order at will.
6. Time Frame for Performance. The duty to begin performance for the delivery of goods or services becomes binding on the Supplier’s receipt of the Order. The time frame for delivery

shall be that as set forth in the Order, and if none is set forth, the time frame shall be a reasonable time. The duty continues until the delivery of all goods or services contained in the General Scope of Services set out in the Order. If either the City or the Supplier terminates the Agreement before completion, then it must do so in accordance with the Agreement as otherwise set out in the Agreement. The Supplier must complete the delivery of goods or services within the time frame for performance set out in the Order. Any extension of the time frame for performance must be for compelling cause shown by the Supplier and approved in writing by the City, with such consent not to be liberally granted or unreasonably withheld.

7. Cancellation for Cause. The City may terminate the Agreement for the Supplier's failure to deliver the goods or services to the City's reasonable satisfaction, by sending to the Supplier seven (7) days written notice. Upon termination for cause, the City by commercially reasonable standards may seek performance by another provider of goods and services and will reserve its rights to recover any difference in costs and expenses between those actually incurred and those of the Agreement.

8. Termination without Cause. The City in its discretion may terminate for any reason by sending to the supplier fifteen (15) days' written notice. The City shall pay the Supplier for goods and services which were properly delivered prior to a termination without cause.

9. Compensation. Upon complete delivery of the product in good marketable condition or receipt of the service as agreed to by the City, the City shall pay to the Supplier the sum stated in the Agreement, and the Supplier shall accept that amount as full compensation for the goods or services. The City shall not be obligated to tender partial payment at any time prior to complete delivery of all goods and services unless it has specifically agreed to so in writing.

10. Monthly Invoices and Payments. In those instances in which the City has consented in the Agreement to a series of partial payments over time, the Supplier must submit monthly invoices to the applicable City department project administrator for the work actually completed. The invoices are due to the City by the tenth day of the month following the month for which invoices are being submitted. Such invoices shall reference the Agreement number or purchase order number, whichever is applicable. The invoices shall be accompanied by a description or itemization of the work done or products delivered, or both, with reasonable specificity as to what they are. The department project administrator shall undertake to review the invoices within ten (10) days of their receipt and to issue to the Supplier a check for the amount due within thirty (30) days of their receipt. In the event the department project administrator determines in good faith that less than the full amount is due under the terms of the Agreement, then the City shall pay the undisputed amount as here provided and provide written notice with the delivery of the undisputed sum of the reason or reasons for the remainder being withheld.

The parties shall work promptly to resolve payment issues within ten (10) days of the department project administrator's providing written notice.

11. Payment and Use Not Acceptance. Neither payment to the Supplier nor use of the delivered goods or services shall be deemed acceptance or non-conforming goods and services, nor shall any other act of omission by the City be deemed acceptance, other than specific written acknowledgement of acceptance, and such acknowledgement may list conditions or contingencies.

12. Necessary Permits, Licenses, and Certificates. The Supplier shall obtain and comply with all necessary and appropriate permits, licenses, and certificates required under applicable federal, state, and local law in performing duties under the Agreement. This duty shall include but not be limited to obtaining a business license from the City of Greenville, if one is not currently held by the Supplier for the business activity of the transaction.

13. City's Right to Audit. The Supplier shall maintain accurate and detailed books, records, correspondence, and accounts regarding the goods and services rendered to the City under the Agreement. The supplier shall do so in accordance with sound cost accounting and generally accepted accounting principles and procedures. The City shall have the right to audit such books etc. during the course of regular business hours upon reasonable notice to the Supplier, at any time during the term of the Agreement and for a period of two (2) years thereafter.

14. Independent Contractor. The Supplier is and shall represent itself as an independent contractor which is providing goods or services, or both, to the City. Neither the Supplier nor its employees and agents are employees or agents of the City, nor shall they represent themselves as agents of the City. The Supplier is solely responsible for its negligent acts or omissions, or for its willful acts in tort, as well as its breaches of contract with subcontractors or third parties. The City has no duty to and shall not deduct or make payment to federal and state governments for withholding taxes or insurance of any type. The City has no duty and will not pay premiums for workers compensation coverage, which shall be the sole duty of the Supplier to the full extent otherwise required by law. The supplier waives its claims of subrogation to the City for workers' compensation, to the extent that the Supplier has or might have any such claims.

15. Mandatory Insurance Coverage. The Supplier shall procure and maintain insurance coverage for occurrences during the Term of the Agreement against any claim for injuries to persons or damages to property which may arise from, or in connection with, the performance of services or delivery of goods by the Supplier, its employees, agents, contractors, or representatives. Such insurance shall be in the following minimum amounts:

A. Commercial General Liability	\$1,000, 000.00 per occurrence
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B.	Comprehensive Motor Vehicle Liability	\$1,000,000.00 per occurrence
C.	Workers Compensation	Statutory limits
D.	Employers Liability	\$500,000/\$500,000/\$500,000

The Supplier shall deliver certificates of insurance to establish proof of current and ongoing coverage to the City's Risk Manager. The delivery shall be achieved by at least one of the following methods:

Fax transmission: 864-298-2744;
Email: mteal@greenvillesc.gov
Mail: Risk Manager, OMB Dept.
PO Box 2207
Greenville, SC 29602
Personal delivery: Risk Manager, 7th Floor
City Hall, 206 South Main Street
Greenville, SC 29601

Further, in the event the Supplier receives notice of insurance cancellation in any form from an insurance provider or its agent, then the Supplier must assure receipt of written notice within two (2) days of the Supplier's receipt of notice by delivery in one of the above referenced means of contact.

The General Liability policy must contain or be endorsed to contain a provision naming the City, its officers, officials, and employees as additional insured's for activities arising under the Supplier's delivery of goods or services under the Agreement. The coverage shall be primary as to the Supplier's negligent acts and omissions or willful misconduct. It shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability coverage.

The Workers' Compensation Coverage shall apply to all of the Supplier's employees who are in any way connected with the Supplier's performance under the Agreement. The coverage shall comply with all applicable state laws and provide a waiver of subrogation from the Supplier against the City, its officers, officials, agents and employees, unless otherwise approved by the City.

The supplier must obtain insurance coverage from insurers with a current A. M. Best's rating of net less than A: VII. The insurers must be licensed to do insurance business in the State of South Carolina, unless otherwise approved by the City. The Supplier cannot be a self-insured in order to meet these requirements, unless the City in writing consents for the particular named Supplier for the specific Agreement.

The Supplier shall be solely liable and the City in no way shall be responsible for any coverage deductible, co-insurance penalty, or self-insured retention (if applicable), including any loss sustained because of the operation of the deductible, penalty, or retention.

Further, the Supplier has an affirmative duty, and shall carry out that duty, to see that any subcontractor performing on the Supplier's behalf shall also have the same insurance obligations as are borne by the Supplier under these general terms and conditions.

16. Assignment of Duties. Neither the City nor the Supplier may assign its duties under the Agreement without the prior written authorization of the other.

17. Severability. If a court with competent jurisdictions concludes that any one provision of the Agreement is invalid as a matter of law, then that provision only shall be separated from the remainder of the Agreement. All other duties of both parties shall be unaffected and shall remain valid and enforceable.

18. No Waiver and Delay. If either the City or the Supplier waives a breach by the other, that waiver is not a waiver of any breach subsequently occurring, No delay in objecting to or otherwise not acting to preserve rights regarding the other party's breach shall be a waiver.

19. Illegal Immigration. By entering into the Agreement, the Supplier is making an affirmative representation to the City that it has reviewed, understood, and complied with all federal and state laws applicable to hiring practices intended by the governments to preclude illegal immigrants from working. There shall be no worker who performs services or delivers goods who is not a citizen of the United States or who does not have the requisite authorization to work in the United States. Further the Supplier warrants that it has taken all precautions under the law in order to make these assurances.

20. Governing Law and Venue. The parties agree that South Carolina law governs all provision of the Agreement, and the Agreement shall be construed in accordance with South Carolina law. If either party initiates an action to enforce the Agreement, then such action must in the Court of Common of Greenville County, or the Magistrates Court of the downtown area. To the extent that an action can be brought in federal court, then it must be brought in the United States District Court for the District of South Carolina, Greenville Division.

21. Indemnification. Regardless of any provision otherwise contained in the Agreement, the Supplier must indemnify and hold harmless the City, its officials and officers, its employees, contractors, agents, and representatives from any claim brought against them, judgment entered against them, or reasonable settlement made on their behalf, whenever the claim, judgment or settlement pertains to acts or omissions arising from the Supplier's negligent or willfully improper exercise or failure to exercise duties under the Agreement. The same duty to

indemnify and hold harmless shall also include the City's costs and expenses incurred in the reasonable defense of such claims, inclusive of civil and criminal fines, judgments, settlements, attorney fees and litigation costs of any type in securing a defense upon learning of the claim, in preparation of trial or administrative proceeding during the trial or proceeding, and at all levels of appeal. This duty to indemnify and hold harmless shall survive the expiration or termination of the Agreement.

22. Modification. No modification of the Agreement shall be valid and binding unless it is first reduced to writing and executed with the same formality as the original Agreement. Any modification shall also be subject to the Terms.